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MICHAEL RODAK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-206

COLQUITT COUNTY BOARD OF EDUCATION, *et al.*,

Petitioners,

—VS.—

WILMA JOYCE HARRINGTON, *et al.*, and E. E. REID, JR., *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI FOR RESPONDENTS HARRINGTON, ET AL.

C. B. KING
HERBERT E. PHIPPS
P. O. Box 1024
Albany, Georgia 31702

JACK GREENBERG
JAMES M. NABRIT, III
NORMAN J. CHACHKIN
10 Columbus Circle
New York, New York 10019

Attorneys for Respondents Harrington, et al.

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Opinions Below

The opinions of the Court of Appeals relating to the issues raised in the Petition are reported at 460 F.2d 193 (5th Cir. 1972) and 450 F.2d 1113 (5th Cir. 1971). The relevant district court decisions of February 28, 1972 and August 9, 1971 are unreported and appear in the Appendix to the Petition at pp. 9a-15a and 21a-23a, respectively.

Prior reported opinions in this case are found at 449 F.2d 161 (5th Cir. 1971); 446 F.2d 1011 (5th Cir. 1971).

Jurisdiction

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

Question Presented

Whether the Court of Appeals erred in refusing to approve a school board's elementary grade desegregation plan for its city-county school system, which rezoned, paired and restructured city schools while leaving county schools with disproportionate racial compositions, and in ordering implementation of a feasible alternative plan presented to the district court which involves both city and county schools.

Statement

This suit was commenced by Negro parents and schoolchildren on February 16, 1965 to desegregate the public schools of Colquitt County, Georgia.[1] The instant proceedings arise from a Motion for Further Relief filed by plaintiffs seeking further desegregation after a free choice decree (modeled upon *United States* v. *Jefferson County Bd. of Educ.*, 372 F.2d 836 (1966), *aff'd en banc*, 380 F.2d 385 (5th Cir.), *cert. denied sub nom. Caddo Parish School Bd.* v. *United States*, 389 U.S. 840 (1967)) proved ineffective.

A pending appeal from the decree ultimately entered by the district court upon the Motion for Further Relief was

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[1] Suit was originally brought against the Colquitt County Board of Education and the Board of School Commissioners of the City of Moultrie, which jointly administered the schools in Colquitt County. The functions of the two bodies were consolidated in the Colquitt County Board during the course of the litigation.

held in abeyance until this Court's decisions in *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971), and companion cases, were rendered. On June 29, 1971, the Court of Appeals remanded the matter to the district court with directions to "implement a plan for the 1971-72 school term which . . . plan shall comply fully with the principles establishes in *Swann* . . . ." 446 F.2d at 1012.[2]

On remand the school board submitted a plan which proposed to cluster five of the system's elementary schools, to which specific reference had been made by the Court of Appeals, and restructure the grades so that the formerly black Gray Elementary School would serve grades 5-7 and the students who formerly attended it would be distributed among the other schools. A group of white parents intervened and proposed an alternative plan which would also involve other elementary schools in the system in the desegregation process. Without a hearing, the district court approved the school board's plan on the ground that it had no authority to require any desegregation beyond that involving the schools specifically mentioned in the prior Court of Appeals opinion.

The intervenors appealed and on October 28, 1971 the Fifth Circuit vacated and remanded, 450 F.2d 1113, clarifying its earlier opinion and directing the district court to hold an evidentiary hearing on the intervenors' proposal and any objections thereto. Following such a hearing, the district court again approved the board's plan. The intervenors again appealed and the Fifth Circuit vacated, noting that the board's plan would leave five elementary schools in the county over 90% white, or virtually in the

[2] The Court of Appeals also specifically directed that the plan "achieve a greater degree of desegregation" at five named elementary schools, four of which are located within Moultrie. See discussion in text *infra*.

same status as they were prior to any desegregation at all having taken place.[3] On the other hand, found the Court of Appeals, the intervenors' plan would affect all schools, "achieve the greatest possible degree of actual desegregation," citing *Davis* v. *Board of School Comm'rs of Mobile*, 402 U.S. 33 (1971), and eliminate predominantly one-race schools throughout the system. The Court again directed hearings for any modifications which might be required to implement the intervenors' plan, and "caution[ed] against placing the burden of disestablishment of the dual school system in Colquitt County predominantly upon the black students. See, e.g., *Lee* v. *Macon County Board of Education*, 5 Cir., 1971, 448 F.2d 746."[4]

Reasons Why the Writ Should Be Denied

Petitioners suggest (pp. 9-10) that the Fourteenth Amendment guarantee of equal educational opportunity free from imposed segregation benefits only black students. We agree that most desegregation cases since *Brown* have focused upon the treatment of black students but we think that fact furnished little support for the Petitioners' *sub silentio* argument that the intervenors below had no standing to seek complete dissolution of the dual school system

[3] Two other formerly black schools located in the county had previously been closed.

[4] On remand the district court approved (without a hearing) a school board modification of the intervenors' proposal, resulting in the placing of grades six and seven at the Grays Elementary School and the transportation of students in grades one through six residing in its former zone (vitrually all of them black) to nine other elementary schools. *All* younger black children are thus bearing the full transportation burden of the plan, and *no* young white students. Plaintiffs (respondents Harrington, et al.) have therefore filed, subsequent to the remand proceedings, a motion for further relief seeking modification of the plan to more equitably distribute the burden of disestablishment, in accordance with the directions of the Court of Appeals.

in Colquitt County. Indeed, we note that the Court of Appeals for the Fourth Circuit reached a result similar to that below in *Whitley* v. *Wilson City Bd. of Educ.*, 427 F.2d 179 (4th Cir. 1970).

The modifications to the Board's plan proposed by the intervenors and directed by the Court of Appeals are identical in nature to the noncontiguous zone created by the district court in Charlotte for Independence High School, to insure that it would not remain wholly disproportionate and attract students seeking a haven from desegregation. See 306 F. Supp. 265, 269 (E.D.N.C. 1969), *aff'd on this issue*, 431 F.2d 138, 145-46, *rev'd on other grounds*, 402 U.S. 1 (1971). The ruling below is in no way inconsistent with *Swann*, and the petition raises no issues not already settled by this Court.

CONCLUSION

For the foregoing reasons, respondents Harrington, et al. respectfully pray that the writ be denied.

Respectfully submitted,

C. B. King
Herbert E. Phipps
P. O. Box 1024
Albany, Georgia 31702

Jack Greenberg
James M. Nabrit, III
Norman J. Chachkin
10 Columbus Circle
New York, New York 10019

Attorneys for Respondents Harrington, et al.